

Serial No. 10/728,062  
Response dated September 26, 2005  
Reply to Office Action of August 26, 2005

### REMARKS

Claims 1-92 are currently pending. Claims 11, 12, 32, 33 and 55 are amended herein to correct for typographical errors.

### ELECTION

In the Office Action, the Examiner divided the claimed subject matter into two Groups and required the Applicant to elect one Group for prosecution. The Examiner presented the Groups as

- Group I: Claims 1-21 and 43-67, drawn to a non-crosslinked polyolefin foam comprising two components, second component being polyethylene, and a method of manufacturing the foam; and
- Group II: Claims 22-24 and 68-92, drawn to a non-crosslinked polyolefin foam comprising two components, second component being polypropylene, and a method of manufacturing the foam.

Applicant elects with traverse Group I directed to claims 1-21 and 43-67. The Examiner alleges that Group I is directed to "a non-crosslinked polyolefin foam comprising two components, second component being polyethylene..." Applicant submits that Group I, as recited in claim 1, is directed to a non-crosslinked polyolefin foam comprising two components, the second component being a low density polyolefin. Applicant submits that a low density polyolefin (as recited in claim 1) includes, but is not limited to, a low density polyethylene.

Applicant believes that the election requirement is improper. Applicant respectfully submits Section 803 of the MPEP states that "there are two criteria for restriction between patentably distinct inventions" as follows:

- (1) The inventions must be independent...; and
- (2) There must be a serious burden on the Examiner if restriction is not required....

Applicant traverses the restriction requirement because (1) all groups of restricted claims are properly presented in the same application; (2) undue diverse searching would not be required; (3) all claims should be examined together; and (4) the inventions of Group I and II do not have divergent subject matter. Examination of claims 22-24 and 68-92, would place no

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additional "serious" burden on the Examiner as examination of these claims would not require undue diverse searching beyond that which would be necessary for examination of claims 1-21 and 43-67.

Accordingly, Applicant respectfully requests that the restriction requirement between Group I and Group II be withdrawn.

### CONCLUSION

Applicant invites the Examiner to contact the Applicant's Attorney if questions arise concerning this Response.

Applicant authorizes the Commissioner to charge any fees and/or credit any overpayments associated with this paper to Winston & Strawn Deposit Account No. 50-1814, Ref. No. 086056-06600-USPT.

Further, if a fee is required for an extension of time under 37 C.F.R. § 1.136 not provided for above, Applicant requests such extension and authorizes the charging of the extension fee to Winston & Strawn Deposit Account No. 50-1814, Ref. No. 086056-06600-USPT.

Respectfully submitted,

Date: September 26, 2005

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